

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)	
)	
Request for Review of Decision)	Docket No. 02-6
of the Universal Service Administrator)	
)	

Ref.: Applicant Name: Poughkeepsie City School District
 Entity Number: 124259
 Funding Year: FY 2004
 471 Application Numbers: 434624, 434629, and 434655

Background:

During the application review process for FY 2004, Poughkeepsie City School District was subjected to a Selective Review. Despite a thorough submission to the initial reviewer and a detailed follow-up submission to a subsequently assigned reviewer, USAC denied all three of Poughkeepsie's FY 2004 applications for the stated reason:

During application review, you were asked to demonstrate that when you filed your Form 471 you had secured access to the funds needed to pay your portion of the charges, and you were unable to do so.

In a separate letter dated concurrently with the FCDL of March 24, 2005, USAC indicated that "Since you did not respond to our repeated requests for further information, we were unable to determine that you secured access to the resources listed below." The letter went on to list all the normal Item 25 resources.

An appeal of these denials was submitted to USAC on May 3, 2005. The appeal stressed the following two points:

- o Poughkeepsie's Item 25 Worksheet, submitted in response to the Selective Review, calculated its Total E-Rate Initiative for FY 2004 at \$867,753. This was less than 1.5% of the district's total budget for 2004-2005. The Selective Review response also included a list of specific line item accounts in the district's budget covering these E-rate expenses. This list totaled \$1,762,411 — more than twice the Item 25 Worksheet requirement. At the most basic level, based only on the

initial Selective Review response, it is hard to understand how USAC could conclude that Poughkeepsie had not secured sufficient access to sufficient funds.

- o More specifically, to address USAC's assertion that Poughkeepsie had ignored repeated requests for additional information, the district noted that it had faxed an extensive 13-page response to the last USAC request received. A fax confirmation sheet was included indicating that the fax had been successfully transmitted to USAC.

In separate Administrator's Decisions on Appeal, all dated August 31, 2005, the appeal was denied for all three applications. USAC's stated reason for the denials was as follows:

On appeal, you have provided a copy of your February 2, 2005 response the SLD's January 12, 2005 follow-up request. However, there is no record that the February 2, 2005 response was received by SLD. The fax confirmation provided shows that a 13-page fax was sent on February 2, 2005 to fax number (973) 599-6576. The fax number to respond to the Selective Review Information Request and all follow-up requests was (973) 599-6515. As such, SLD must rely on its records.

It is not clear that the above quoted appeal denial reason is accurate. When we pursued the issue informally with the SLD, prior to filing this appeal, we were told that the February 2nd fax had indeed been received and reviewed, but that the response contained inadequate budget support (as would be indicated in the USAC appeal case file).

In light of the above, this appeal addresses both the stated and the indicated alternative reason for the denials. Because the denials are based on insufficient funds, these arguments are focused only on Selective Review budget issues.

Failure to respond argument:

Poughkeepsie's initial response to the Selective Review was submitted May 20, 2004 (see Attachment I). The response included a copy of the district's complete budget for 2004-2005 and a special table identifying E-rate related budget items.

Roughly eight months later, on January 12, 2005,¹ a request for additional information was received from a different reviewer. A 13-page response to this request was faxed back to the reviewer on February 2, 2005. As indicated in this response, much of the information requested by the second review was contained in the initial Selective Review response or in the applications' Item 21 attachments. The response did, however, attempt to clarify several issues.

We note that this response was more than 7 days after the initial request. Recognizing that Selective Review requests are typically more complex than normal PIA inquiries, and that this request was received in the midst of the FY 2005 application window, we believe this was a reasonably timely response given the additional information requested

¹ A second notice was received dated January 20, 2005.

and the interim conversations with the reviewer. We dispute the assertion that the district failed to respond to "repeated" requests.

If, as suggested in USAC's appeal denial letter, USAC contends that it never received the 13-page fax, we direct the Commission's attention to the fax log documentation provided in the district's original SLD appeal (see Attachment II).

We do admit that the fax was not sent to the correct USAC fax number for Selective Reviews. It was, instead, sent to the USAC fax number that the reviewer had been using in her previous position as an initial reviewer. We note, however, that the fax clearly identified the reviewer's correct name and telephone number. We argue that basic USAC procedures should be able to properly handle and deliver a fax sent, not only to the same organization, but to the specified recipient's previous number. In any event, a simple telephone call by the reviewer to check on the status of an outstanding request would have cleared up the problem of a misdirected fax.

Adequacy of response argument:

If, in fact, USAC did receive both the initial Selective Review response of May 20, 2004, and the supplemental response of February 2, 2005, as indicated to us informally, then we must address the adequacy of the information provided in both responses.

As indicated above, the district's E-Rate Initiative for FY 2004 was less than 1.5% of the district's total budget for 2004-2005. The initial Selective Review response also included a special table listing the specific line item accounts in the district's budget covering these E-rate expenses and totaling more than twice the Item 25 Worksheet requirement. The initial response also referenced and documented a \$27 million capital project that was providing funding for retrofitting.

The budget portion of the supplemental information request of January 2nd asked for "...a finalized operating budget for 2004-2005 showing both revenues and expenses indicating where your portion of the budget is coming from on both the revenues and expenses sides of the budget." The request went on to direct the placement of "arrows" indicating E-rate items.

The district's supplemental response referenced the operating budget provided in the initial response, indicating that it had been approved and providing documentation of that approval.

Since the budget was unchanged, and was not resubmitted, the district's supplemental response admittedly did not include the placement of "arrows" showing the E-rate items. As we understood the directions to use "arrows", the objective was to specifically identify those budget items that were directly related to E-rate. We believe that this objective was met in a much cleaner and more useful way in the district's initial response by providing, in a single table (Table 3), a list of all the major budget line items, by accounting code number, that include E-rate expenses. By doing so, we had hoped to save the USAC reviewer the trouble of adding up all the appropriate line items spread throughout a document of more than 40 pages.

Note that Table 3 listed E-rate related expense items only, not revenue items as also requested. We have never fully understood USAC's request to identify E-rate revenue items in a public school's budget where total revenues dwarf E-rate expenses and where, with limited exceptions, all revenues are fungible.² Incorrectly, perhaps, we assumed that with E-rate expenses only comprising 1.5% of the total budget, revenue assignment was hardly an issue. Revenue sufficiency should have been obvious.


In summary, we believe that the initial and supplemental Selective Review responses were thorough, professional, and more than sufficient to demonstrate the adequacy of the district's financial resources.

At the very least, we ask the Commission to recognize that the district's responses represented a good faith and intelligent effort to comply with both the initial and supplemental Selective Review information requests. Given this effort, we believe it was incumbent upon USAC to request simple clarifications, as necessary, to establish that Poughkeepsie's financial resources were more than adequate. It is this same principle of fairness and responsibility recently set forth in the Commission's Fayette County School District decision (DA 05-2176).

Summary:

By this appeal, we ask the Commission to review and reverse the Administrator's decision on the referenced Poughkeepsie's applications and, more broadly, to instruct the USAC to re-evaluate its Selective Review procedures so as to better align them with the principles enunciated by the Commission in its Fayette County decision.

Respectfully submitted,

By: 
Winston E. Himsworth on behalf of
Poughkeepsie City School District

Dated: October 13, 2005

Attachment I: Initial Selective Review Response

Attachment II: District's SLD Appeal (including supplemental response)

² When pressed by a reviewer in a subsequent Selective Review to identify the revenue line item supporting E-rate, we finally said it was taxes (which represented the majority of the revenue). "Fine," said the reviewer, and we moved on. It was a basically a meaningless answer, but E-rate is, after all, a learning process.